

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOHN MCCOY,

Plaintiff,

vs.

CCA HOLDINGS CORPORATION, a Delaware corporation doing business in California as CHARTER COMMUNICATIONS and its successor corporation, CHARTER COMMUNICATIONS, INC., a Delaware corporation doing business in California as CHARTER COMMUNICATIONS (CCI), INC.; CHARTER COMMUNICATIONS PROPERTIES LLC, a limited liability company organized and existing under the laws of the state of Delaware and doing business in the State of California, and DOES 1 THROUGH 100, inclusive,

Defendants.

Case No. CV-11-05054 PSG

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties

1 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
 2 discovery and that the protection it affords from public disclosure and use extends only to the limited
 3 information or items that are entitled to confidential treatment under the applicable legal principles. The
 4 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
 5 not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set
 6 forth the procedures that must be followed and the standards that will be applied when a party seeks
 7 permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
 10 items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
 12 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
 13 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
 15 their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items that it
 17 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
 19 manner in which it is generated, stored, or maintained (including, among other things, testimony,
 20 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in
 21 this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
 23 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in
 24 this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
 26 does not include Outside Counsel of Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
 28 not named as a Party to this action.

1 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but
 2 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
 3 party or are affiliated with a law firm which has appeared on behalf of that party.

4 2.10 Party: any party to this action, including all of its officers, directors, employees,
 5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
 7 this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
 9 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
 10 retrieving data in any form or medium) and their employees and subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
 12 "CONFIDENTIAL."

13 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
 14 Party.

15 **3. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only Protected Material (as
 17 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
 18 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
 19 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
 20 conferred by this Stipulation and Order do not cover the following information: (a) any information that is
 21 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain
 22 after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order,
 23 including becoming part of the public record through trial or otherwise; and (b) any information known to
 24 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a
 25 source who obtained the information lawfully and under no obligation of confidentiality to the Designating
 26 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
 3 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
 4 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this
 5 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all
 6 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any
 7 motions or applications for extension of time pursuant to applicable law.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
 10 Party that designates information or items for protection under this Order must take care to limit any such
 11 designation to specific material that qualifies under the appropriate standards. The Designating Party must
 12 designate for protection only those parts of material, documents, items, or oral or written communications
 13 that qualify – so that other portions of the material, documents, items, or communications for which
 14 protection is not warranted are not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
 16 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or
 17 retard the case development process or to impose unnecessary expenses and burdens on other parties)
 18 expose the Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it designated for
 20 protection do not qualify for protection, that Designating Party must promptly notify all other Parties that
 21 it is withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 23 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
 24 Discovery Material that qualifies for protection under this Order must be clearly so designated before the
 25 material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but
 28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix

1 the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions
 2 of the material on a page qualifies for protection, the Producing Party also must clearly identify the
 3 protected portion(s) (e.g., by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents or materials available for inspection need not
 5 designate them for protection until after the inspecting Party has indicated which material it would like
 6 copied and produced. During the inspection and before the designation, all of the material made available
 7 for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the
 8 documents it wants copied and produced, the Producing Party must determine which documents, or
 9 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,
 10 the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected
 11 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing
 12 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 13 margins).

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 15 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
 16 all protected testimony.

17 (c) for information produced in some form other than documentary and for any other
 18 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 19 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or
 20 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall
 21 identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
 23 qualified information or items does not, standing alone, waive the Designating Party's right to secure
 24 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
 25 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
 26 Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation
 4 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
 5 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
 6 designation by electing not to mount a challenge promptly after the original designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
 8 providing written notice of each designation it is challenging and describing the basis for each challenge.
 9 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
 10 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
 11 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
 12 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
 13 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
 14 belief that the confidentiality designation was not proper and must give the Designating Party an
 15 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
 16 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
 17 the next stage of the challenge process only if it has engaged in this meet and confer process first or
 18 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
 19 manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
 21 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and
 22 in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial
 23 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
 24 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent
 25 declaration affirming that the movant has complied with the meet and confer requirements imposed in the
 26 preceding paragraph. Failure by the Designating Party to make such a motion including the required
 27 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
 28 designation for each challenged designation. In addition, the Challenging Party may file a motion

1 challenging a confidentiality designation at any time if there is good cause for doing so, including a
 2 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought
 3 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has
 4 complied with the meet and confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 6 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
 7 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
 8 Designating Party has waived the confidentiality designation by failing to file a motion to retain
 9 confidentiality as described above, all parties shall continue to afford the material in question the level of
 10 protection to which it is entitled under the Producing Party's designation until the court rules on the
 11 challenge.

12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 14 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
 15 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
 16 persons and under the conditions described in this Order. When the litigation has been terminated, a
 17 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 19 secure manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
 21 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
 22 item designated “CONFIDENTIAL” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
 24 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
 25 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto
 26 as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel) of the Receiving
 28 Party to whom disclosure is reasonably necessary for this litigation and who have signed the

“Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a

1 determination by the court from which the subpoena or order issued, unless the Party has obtained the
 2 Designating Party's permission. The Designating Party shall bear the burden and expense of seeking
 3 protection in that court of its confidential material – and nothing in these provisions should be construed as
 4 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
 5 court.

6

7 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-Party in
 9 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
 10 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
 11 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to produce a
 13 Non-Party's confidential information in its possession, and the Party is subject to an agreement with the
 14 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party that
 16 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
 18 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
 19 information requested; and

20 (3) make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 22 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
 23 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
 24 protective order, the Receiving Party shall not produce any information in its possession or control that is
 25 subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a

27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
 28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
 interests in this court.

1 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
 2 court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
 5 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving
 6 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
 7 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 8 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such
 9 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto
 10 as Exhibit A.

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 13 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
 14 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 15 whatever procedure may be established in an e-discovery order that provides for production without prior
 16 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
 17 agreement on the effect of disclosure of a communication or information covered by the attorney-client
 18 privilege or work product protection, the parties may incorporate their agreement in the stipulated
 19 protective order submitted to the court.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
 22 modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
 24 Party waives any right it otherwise would have to object to disclosing or producing any information or
 25 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right
 26 to object on any ground to use in evidence of any of the material covered by this Protective Order.
 27

1 12.3 Filing Protected Material. Without written permission from the Designating Party or a
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
4 must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed
5 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
6 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request
7 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
8 entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal
9 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party
10 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
11 instructed by the court.

12 **13. FINAL DISPOSITION**

13 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
14 Party must return all Protected Material to the Producing Party or destroy such material. As used in this
15 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other
16 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned
17 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the
18 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,
19 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
20 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
21 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
22 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
23 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
24 consultant and expert work product, even if such materials contain Protected Material. Any such archival
25 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 4 (DURATION).

27
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2
3

4 DATED: December 22, 2011

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6
7

8 By: /s/
9
10

Ralph A Zappala
11 Attorneys for Defendants CHARTER
12 COMMUNICATIONS, INC. d/b/a CHARTER
13 COMMUNICATIONS (CCI), INC. and
14 CHARTER COMMUNICATIONS
15 PROPERTIES LLC
16

DATED: December 22, 2011

BERGESON, LLP

10 By: /s/
11
12

Mindy M. Morton
13 Attorneys for Plaintiff, JOHN McCOY
14
15

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Ralph A. Zappala, attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 22, 2011, in San Francisco, California.

/s/
Ralph A. Zappala

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: December 30, 2011



Paul S. Grewal
United States District Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand
the Stipulated Protective Order that was issued by the United States District Court for the Northern District
of California on [date] in the case of _____ **[insert formal name of the case and the number and**
initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
[signature]